REMARKS

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(e) AND 35 U.S.C. § 103(a)

The Examiner rejected the independent claims of the present application under 35 U.S.C. § 102(e) "as being anticipated over Merchant et al. (US 2002/0128815)" (hereinafter *Merchant*). *Office Action*, 5. The Examiner also rejected dependent claims 2, 3, 5, 13, 14, and 16 of the present application under 35 U.S.C. § 103(a) "as being unpatentable over *Merchant*." *Office Action*, 11. Further, the Examiner rejected dependent claims 6-9, 17-20, 22, and 23 under 35 U.S.C. § 103(a) "as being unpatentable over *Merchant* in view of Rangachar (US 6,301,252)." *Office Action*, 14.

The Applicant respectfully traverses the Examiner's rejections in that *Merchant* does not constitute prior art against the presently claimed invention. *Merchant* was filed January 6, 2001, and does not claim priority to any other patent or application. 35 U.S.C. § 102(e) applies to an "application for patent filed by another in the United States before the invention by the applicant for patent." 35 U.S.C. § 102(e). 35 U.S.C. § 103(a) applies to "differences between the subject matter sought to be patented and the prior art" 35 U.S.C. § 103(a).

Submitted herewith is the DECLARATION OF JACOB McGUIRE UNDER 37 C.F.R. § 1.131. The DECLARATION OF JACOB McGUIRE evidences the reduction to practice of the invention as set forth in (at least) the independent claims of the present application prior to December 27, 2000. Specifically, the DECLARATION OF JACOB McGUIRE reflects the reduction to practice of a program capable of performing the functions identified in the independent claims DECLARATION, ¶ 1-6. See also Exhibit 1 code entitled "Netdevlib.py," Exhibit 2 code entitled "alteonlib.py," Exhibit 3 code entitled "Ciscopixlib.py," and Exhibit 4 which is a directory listing identifying Exhibits 1, 2, and 3, as being created on December 4, 2000, December 26, 2000, and December 26, 2000, respectively.

Having 'sworn behind' *Merchant*, the Examiner's rejections under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) are 'broken.' That is, the rejection of every independent and dependent claim of the present application depends on *Merchant*, which is ineligible for citation against the presently pending claims. See *Office Action*, 5 et seq. As such, the Examiner's rejections under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) are overcome.

CONCLUSION

The Applicant has evidenced the inapplicability of *Merchant* as a prior art reference against the presently pending independent claims through the enclosed 37 C.F.R. § 1.131 declaration. As such, the rejection of the independent claims under 35 U.S.C. § 102(e) is overcome. Moreover, the rejections of the dependent claims under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) are similarly overcome.

The Examiner is invited to contact the Applicant's undersigned representative with any questions concerning this matter.

Respectfully submitted,
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